feasor, even though he has actually a fraudulent intent and the desire to cheat, if indeed, he does not actually know that the representations he makes are false and the inducements he holds out are pitfalls. A premium is put upon the honest blunderer. No matter how negligent a man may be in obtaining the information he gives, no matter if every other reasonable man would have realized that such information must necessarily be false, if it cannot be proved that there was actual knowledge of the falsity of the statements on the part of the defendant, there can be no conviction in England for deceit. Theoretically there may be grounds to support such a doctrine. Practically, however, it is inconceivable that it should be applied religiously to every case and it is therefore gratifying to note the refusal to do so in this recent decision of the House of Lords.

In America the rule has never been uniformly adopted.[10] Especially in the West is there a tendency to repudiate the English doctrine and to hold the defendant in actions for deceit to a strict liability under all circumstances. It is also of interest to note that Parliament itself was dissatisfied with the rule and shortly after it was announced enacted legislation which made it effectual thereafter with respect to situations similar to the facts of *Derry* v. *Peek*.[11] This recent decision of the House of Lords puts a still further limitation upon the rule. There is some doubt as to whether it was ever intended to be so wide in its application,[12] but however that may be, its scope in this respect is now determined.

L. B. S.

SALES—APPROPRIATIONS—Where there is an executory contract of sale, requiring the seller to appropriate certain goods to the contract, the seller cannot, even though the contract bind the buyer to accept the seller's appropriation, appropriate to the contract goods which are no longer in existence or have been destroyed. B contracted to buy from A, a dealer in oil seed, six thousand tons of soya beans, and a clause in the contract recited that: "In case of resales, a copy of original appropriation shall be accepted by buyers." The shipper of a cargo of soya beans sold it to A while it was still afloat and delivered to A a formal appropriation of the cargo. A intended to re-appropriate the cargo to B's purchase by delivering to B a copy of the "original appropriation", which B would be bound by his

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[10] Grant v. Hushkle, 74 Wash. 257 (1913); Scholfield Pulley Co. v. Scholfield, 71 Conn. 1 (1898); Holcomb v. Noble, 69 Mich. 396 (1888).

[11] Directors' Liability Act of 1890.

[12] See remarks of Lord Herschell, *supra*, note 4. See also criticism by Lord Haldane, in the principal case, as follows: "If among the great common lawyers who decided Derry v. Peek there had been present some versed in the practice of the Court of Chancery, it may well be that . . . more attention would have been directed to the wide range of the class of cases in which, on the ground of a fiduciary duty, courts of equity gave a remedy."

contract to accept. But before A could do this, he received word that the ship had sunk and the cargo was lost. Nevertheless he tendered the "copy of original appropriation" to B, as provided by the contract. B refused to accept it, knowing the cargo was at the bottom of the sea. The dispute was referred to arbitrators, under a clause in the contract, and they decided that B was bound to accept the tender. From that award B appealed to the Committee of Appeal of the Incorporated Oil Seed Association, and the committee stated a special case for a King's Bench Divisional Court to decide the point of law. It was held (Avory, Rowlatt and Shearman, JJ.), reversing the award, that B was not so bound.[1] The procedure in the case is an illustration of a method by which merchants in London submit their disputes to extra-legal authorities for settlement, in the course of which involved legal problems may be submitted by those authorities to the High Court for elucidation. It is a very common practice.

It is clear that a buyer may agree, in his contract, to be bound by the seller's appropriation of goods, without further assent.[2] But if the goods perish before they are appropriated to the buyer's contract it is as though the seller had never had them and his "appropriation" will be a mere empty form which cannot bind the buyer. It is not one of the cases where impossibility of performance renders the contract void, as provided for by Sections Six and Seven of the Sale of Goods Act;[3] they apply only where specific goods are appropriated to the contract by the terms of the contract itself, not where they are to be subsequently appropriated thereto. If the contract here, for instance, between A and B, had been for the sale of beans in that particular cargo, the loss of the cargo would have avoided the contract, under these sections of the act.

There is, it is true, an equitable rule that where a contract purports to assign goods to be acquired *in futuro*, as in this case, "if the goods be sufficiently described to be identified on acquisition by the seller, the equitable interest in them passes to the buyer as soon as they are acquired."[4] But as it is well understood that the seller can, before actual appropriation, defeat this equitable interest by a resale to a second purchaser who is without notice,[5] so also that equitable interest would be wiped out by the loss or destruction of the goods before actual appropriation.

The decision involves no novel point of law but registers formally the opinion of a court on a point in the law of sale which, though clear, does not seem to have been the basis for any reported judgment.

S. R.

[1] *In re* an Arbitration between The Olympia Oil & Cake Company, Limited, and the Produce Brokers Company, Limited, [1915] 1 K. B. 233.

[2] See Blackburn, p. 137.

[3] 56 & 57 Vict., c. 71 (1893).

[4] Chalmers, p. 27; Holroyd v. Marshall, 10 H. L. 191 (Eng. 1862).

[5] Joseph v. Lyons, 15 Q. B. D. 280 (Eng. 1884).